



ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

DOCKET FILE COPY ORIGINAL

Jonathan Askin  
General Counsel

February 15, 2000

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

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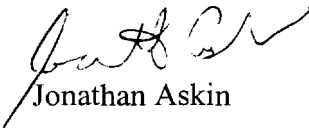
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control, CC Docket No. 98-184**

Dear Ms. Salas:

Please find attached an original and four copies of the Comments of the Association for Local Telecommunications Services in the above-referenced proceeding.

Sincerely,

  
Jonathan Askin

cc: ITS

Janice Myles, Policy and Program Planning Division, Common Carrier Bureau  
Lauren Kravetz, Wireless Telecommunications Bureau  
Matthew Vitale, International Bureau  
Julie Patterson, Policy and Program Planning Division, Common Carrier Bureau (6 copies)

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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GTE CORPORATION, )  
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Transferor, )  
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and )  
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BELL ATLANTIC CORPORATION, )  
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Transferee, )  
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For Consent to Transfer of Control )

CC Docket No. 98-184

**COMMENTS OF THE ASSOCIATION FOR LOCAL  
TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services ("ALTS"), pursuant to the Commission's January 31, 2000, Public Notice<sup>1</sup> hereby submits these comments on the Supplemental Filing of Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE") and, in particular, on their attempt to evade the application of Section 271 to their proposed merger.<sup>2</sup>

<sup>1</sup> Public Notice, Commission Seeks Comment on Supplemental Filing Submitted by Bell Atlantic Corporation and GTE Corporation, CC Docket No. 98-184, DA 00-165 (rel. Jan. 31, 2000).

<sup>2</sup> See GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control, CC Docket No. 98-184, Supplemental Filing of Bell Atlantic and GTE (filed Jan. 27, 2000) ("Supplemental Filing").

ALTS is the leading national trade association representing facilities-based competitive local exchange carriers (“CLECs”). ALTS does not represent any of the major interexchange carriers (“IXC”) and, therefore, its sole interest in this proceeding involves effects on the market for *local* telecommunications services. It has long been ALTS’s goal to open local telecommunications markets and break down barriers to competition to ensure that American businesses and residential consumers have a choice in their local phone service.

It is with this background that ALTS comments on the proposal of Bell Atlantic and GTE to transfer the Internet backbone and related assets of GTE Internetworking (“GTE-I”) to a newly formed corporation (“DataCo”) in which the merged companies would retain significant equity interests and control. ALTS believes that this proposal violates the mandates of Section 271 of the Telecommunications Act of 1996 (“1996 Act”) and undermines the incentives of the merged parties to open their local markets to competition. The Commission should not permit such a maneuver to succeed.

**I. The Incentives Crafted by Congress Are Working as Intended and Should Not Be Undermined.**

The fourth anniversary of the Telecommunications Act of 1996 has just been observed, and more so than in past years the occasion this year was marked by celebration. As Chairman Kennard correctly stated in his speech last week at the National Press Club, “the Act is working.”<sup>3</sup> The local monopolies that have dominated the telecommunications industry for over a century are slowly but surely eroding, and consumers across the United States are beginning to benefit.

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<sup>3</sup> Address by Chairman William E. Kennard, Federal Communications Commission, “Telecommunications @ the Millennium: The Telecom Act At Four: Hot Links to an Open Society,” National Press Club (Feb. 8, 2000) (“Chairman’s Address”).

As Chairman Kennard observed, “The core features of the Act are that it ended the monopoly franchise of the traditional local telephone companies, and it gave the FCC the power to break open these local markets to competition.”<sup>4</sup> It is the structure and incentives provided for in the Act, specifically in Sections 251(c) and 271, that has allowed competition to emerge in local markets.

Section 251(c) spells out the responsibilities of incumbent local exchange carriers (“ILECs”), but Section 271 reinforces Section 251(c) by creating incentives to enhance the prospects for cooperation on the part of the Bell operating companies (“BOCs”). The market-opening measures of Section 251(c) are counter to the inherent instincts, and the economic incentives, of the ILECs, but in Section 271, Congress wisely created a positive inducement for the BOCs to cooperate with these market-opening measures. Section 271 tells the BOCs, “If you open your local markets to competition, you will be rewarded with new competitive opportunities and new revenue streams.” When the requirements of Section 271 are satisfied in a given state, there the BOC is permitted not only to enter the market for interLATA services but also to expand the range of services it offers its vast existing consumer base, including new packages of services -- local and long distance, voice and data.

Clearly, the Act is working to open local markets to competition. In those states where Section 271 applications have been seriously pursued, new entrants and state public utility commissions have experienced a softening of BOC opposition to market-opening requirements. By no means has this process been perfect (nor have the results), but the effects of the incentive scheme so carefully crafted by Congress are real, substantial, and decidedly beneficial. Conversely, if and to the extent that the Commission makes it possible for the BOCs to enter the interLATA business without first fulfilling all of their market-opening responsibilities, the

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<sup>4</sup> Id. at 1.

incentive scheme crafted by Congress will be weakened, and the prospects for competition will diminish. ALTS exists to break down barriers to local market entry, so that consumers may reap the benefits of competition. ALTS cannot support any weakening of the incentives established by Congress.

Congress attached a special significance to Section 271. This is most vividly demonstrated by the limitation on the Commission's otherwise extremely broad forbearance authority. Congress, understanding that the Act would unleash sweeping changes and create unforeseeable circumstances, decided to allow the Commission to essentially rewrite the law when certain conditions are met.<sup>5</sup> Therefore, Congress determined that the Commission "shall forbear from applying *any* regulation or *any* provision" of the Act to a telecommunications carrier or service, or class thereof, upon a determination that certain enumerated conditions were met.<sup>6</sup> Congress, however, expressly forbade the Commission to exercise this authority in two particular cases: Sections 251(c) and 271.<sup>7</sup> The reason, presumably, was to ensure that the Bell companies would retain their incentive, as well as their obligation, to cooperate in replacing monopoly with competition.

Now is not the time to weaken the BOC's incentives to cooperate with new entrants. Yet the proposal presented by the merger parties would do just that.

## **II. The Bell Atlantic/GTE Proposal Does Not Comply With Section 271.**

From the outset of this proceeding, the parties have apparently understood that, if the proposed merger is effectuated, the combined entity will be subject to the same interLATA prohibition that currently applies to Bell Atlantic. They have also apparently understood that this

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<sup>5</sup> 47 U.S.C. §160

<sup>6</sup> 47 U.S.C. § 160(a) (emphasis added).

prohibition applies to the interLATA services provided by GTE-I. Yet, despite this awareness, the parties have never fully appreciated the seriousness of the Section 271 impediment.

The Commission has shown great wisdom and fortitude in rejecting efforts by various Bell companies to eviscerate Section 271. The Commission denied five unmeritorious Section 271 applications. It rejected proposals to create a single, national “data LATA.” It declined to waive or forbear from Section 271 in the context of “advanced services.”

Wisdom and fortitude are required once again to properly dispose of the latest proposal. The Supplemental Filing attempts to dodge the application of Section 271 to the merger but still allow the merged entity to retain a very substantial interest in an Internet backbone and data business that conducts interLATA activities in Bell Atlantic’s “in-region” states for which Section 271 authority has not been granted. Thus, instead of Bell Atlantic (and now GTE) experiencing a strengthening of their desire to obtain interLATA authority (and a concomitant increase in their willingness to fulfill their market-opening responsibilities), they would if this proposal were to be granted be able to continue a substantial interLATA business without first fulfilling the competitive checklist and other requirements of Section 271.

Section 271 bars not only their BOCs but also their “affiliate[s]” from providing interLATA services. 47 U.S.C. § 271(a). Affiliate is broadly defined and encompasses (1) any entity in which a BOC “(directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership and control with another person.” 47 U.S.C. § 153(1). For purposes of the latter definition, “‘own’ means to own an equity interest (or the equivalent thereof) of more than 10 percent.” GTE and Bell Atlantic have not successfully demonstrated that their proposal does not leave them with an equity interest (or equivalent thereof) of more than 10

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<sup>7</sup> 47 U.S.C. § 160(d) (“[T]he Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that *those*

percent in the entity providing interLATA services, nor have they successfully demonstrated that they would lack “control” of that entity.

The merger parties purport to propose to divest 90 percent of their interLATA operations in a new entity (“DataCo”). In fact, what they have in mind is selling off 20, not 90, percent of their interLATA operations, and retaining other kinds of control over the “divested” entity.

The Supplemental Filing offers to “transfer substantially all of GTE-I’s existing data business into a corporation (‘DataCo’) that will be publicly owned and controlled.”<sup>8</sup> Public shareholders will be able to purchase DataCo Class A common stock, amounting to 90% of the voting rights and dividend distributions, while Bell Atlantic/GTE will receive shares of Class B stock of DataCo, amounting initially to 10% of the voting rights and distributed dividends.<sup>9</sup> But the economic interest, and the power, that Bell Atlantic and GTE will retain are vastly greater than if, for example, DataCo had only one class of stock and 90 percent of *that* were to be sold off.

The key fact is that the DataCo Class B shares that only the merged parties would own are convertible into “shares that will represent 80% of the outstanding shares following conversion.”<sup>10</sup> Thus, whenever the conversion right is exercised, Bell Atlantic and GTE -- *without paying anything to anyone* -- will own 80 percent of DataCo. With the stroke of a pen, the “90 percent” public ownership will become 20 percent.

The parties attempt to mask this maneuver by pointing to Commission precedent in an attempt to show that the merged entity “will not ‘own an equity interest’ in DataCo of more than 10% under the traditional indicia of equity ownership.” This argument fails on two grounds.

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*requirements have been fully implemented”*) (emphasis added).

<sup>8</sup> Supplemental Filing, at 32.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

First, never has the Commission, or any court for that matter, considered such an ownership interest in the special context of Section 271. Given the unique role of Section 271 in national telecommunications policy (and in the statutory schema), precedents from other contexts cannot properly be invoked to justify deviations from the legislative requirements. Second, the structure and true value of the merged entity's interest in the newly formed company in no way resembles the 90% divestiture that the parties claim. No objective observer of the arrangements proposed here could reasonably conclude that the merged entity is limited to a 10% equity interest. Clearly, this would not be the view of Wall Street, the board members of this newly formed company, or its employees. Nor should this be the view of government official charged with ensuring that Sections 251(c) and 271 are fully implemented.<sup>11</sup>

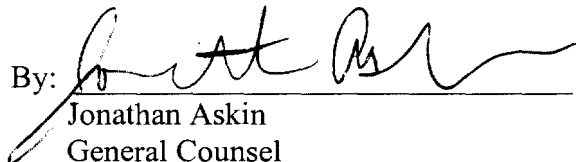
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<sup>11</sup> Furthermore, the interests of Bell Atlantic and GTE "will be protected by certain reasonable investor safeguards," that are sure to give the merged entity some level of control over DataCo. Id. at 34. The merged entity will have the right to approve certain business decisions and changes that they deem "adversely impact Bell Atlantic/GTE's minority investment and conversion rights." Id. & Schedule A. From this one may infer that the merged entity will exercise substantial "control" of DataCo, even if the Commission were not prepared to find that Bell Atlantic's equity interest amounts to "10 percent (or the equivalent thereof)."

It was Chairman Kennard who clearly stated that "our biggest challenge in the coming months is to accelerate competition in th[e local phone market] sector."<sup>12</sup> But it is all five Commissioners, and the Commission's dedicated and capable staff, who must carry that burden. Allowing Bell Atlantic and GTE to circumvent their Section 271 obligations would only make that challenge a more difficult one.

Respectfully submitted,

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TELECOMMUNICATIONS SERVICES

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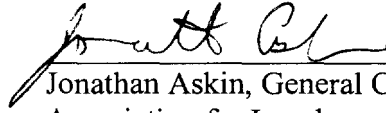
February 15, 2000

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<sup>12</sup> Chairman's Address, at 4.

## CERTIFICATE OF SERVICE

I, Jonathan Askin, do hereby certify that on this 15<sup>th</sup> day of February, 2000, copies of the foregoing Comments of the Association for Local Telecommunications Services were served via first class mail, postage prepaid, or by hand delivery to the parties listed below.

  
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Association for Local  
Telecommunications Services

The Honorable William E. Kennard  
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The Honorable Harold Furchtgott-Roth  
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Washington, D.C. 20554

In accordance with Section 1.51(c) of the Commission's Rules, 47 C.F.R. §1.51(c), an original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. In addition, copies of each pleading must be filed with other offices in the following manner: (1) one copy with International Transcription Service, Inc., the Commission's duplicating contractor, 445 12<sup>th</sup> Street, S.W., CY-B402, Washington, D.C. 20554, (202) 857-3800; (2) one copy with Janice Myles of the Policy and Program Planning Division, Common Carrier Bureau, 445 Twelfth Street, S.W., Room 5-C327, Washington, D.C. 20554; (3) one copy with Lauren Kravetz, Wireless Telecommunications Bureau, 445 Twelfth Street, S.W., Room 4-A163, Washington, D.C. 20554; (4) one copy with Matthew Vitale, International Bureau, 445 Twelfth Street, S.W., Room 6-A821, Washington, D.C. 20554; and (5) six copies with Julie Patterson, Policy and Program Planning Division, Common Carrier Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C134, Washington, D.C. 20554.

In addition to filing paper comments, parties may also file comments using the Commission's Electronic Comment Filing System (ECFS).<sup>4</sup> Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. For filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov) and should include the following words in the body of the message: "get form <your e-mail address.>" A sample form and directions will be sent in reply.

Copies of the applications and any subsequently filed documents in this matter may be obtained from International Transcription Service, Inc., 445 12<sup>th</sup> Street, S.W., CY-B402, Washington, D.C. 20554, (202) 857-3800. Electronic versions of the applications are also available on the FCC's Internet Home Page (<http://www.fcc.gov>) and through the Commission's Electronic Comment Filing System. To the extent that parties file electronic versions of responsive pleadings, such filings also will be available on the FCC's Internet Home Page and through the Commission's Electronic Comment Filing System. Copies of the applications and documents are also available for public inspection and copying during normal reference room hours at the Commission's Reference Center, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C. 20554.

Parties are reminded that this proceeding has been designated as "permit but disclose" for purposes of the Commission's *ex parte* rules.<sup>5</sup> As a "permit but disclose" proceeding, *ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission's rules that are applicable to non-restricted proceedings.<sup>6</sup> In this regard, memoranda summarizing

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<sup>4</sup> See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

<sup>5</sup> See generally 47 U.S.C. §§ 1.1200-1.1216.

<sup>6</sup> An *ex parte* presentation is any communication (spoken or written) directed to the merits or outcome of a proceeding made to a Commissioner, a Commissioner's assistant, or other decision-making staff member that, if